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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

M. R. KAMBIZ FARNAAM,

Plaintiff and Appellant,

v.

ATLANTIC RICHFIELD COMPANY,

Defendant and Respondent.

G028447

(Super. Ct. No. 705904)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert Gardner, Judge. Affirmed.

Ghods Law Firm, Mohammed K. Ghods and Golnar Modjtahedi for Plaintiff and Appellant.

Haight, Brown & Bonesteel, Rita Gunasekaran for Defendant and Respondent.

M. R. Kambiz Farnaam sued Atlantic Richfield Company (ARCO) for various legal and equitable claims arising out of his failed attempt to purchase an interest in a gasoline service station franchise from the original franchisee. The court sustained ARCO's demurrer to several causes of action without leave to amend, and the case proceeded to trial on four causes of action: negligence, intentional interference with contractual relations, accounting, and constructive trust. The jury rendered a special verdict in favor of ARCO on the negligence and intentional interference claims, and the trial court, after an intervening appeal to this court, ultimately decided in favor of ARCO on the equitable causes of action.

Farnaam now argues the court erred in sustaining ARCO's demurrer to his causes of action for conversion, impairment of security, wrongful termination of franchise and foreclosure of collateral without leave to amend. We disagree. Farnaam's cause of action for conversion failed to state any claim against ARCO. The remaining claims each alleged damages flowing from ARCO's termination of the franchise. All such claims are exclusively governed by the Federal Petroleum Marketing Practices Act (PMPA) (15 U.S.C. §§ 2801 et seq.), and Farnaam was therefore precluded from relying upon state law to establish a right to relief. The judgment is affirmed.[1]

* * *

Farnaam's first amended complaint alleged 22 causes of action against various defendants. In essence, Farnaam alleged he was the victim of a fraud perpetrated by Davis Tran, the owner of the franchise in question, and Majid Tabibi, with whom Farnaam intended to form a partnership for purchase of the franchise. Farnaam invested $550,000 in the transaction, only to later find out the sale was structured to name Tabibi as the sole purchaser. ARCO was allegedly notified of the proposed sale of the franchise.

When Farnaam learned that he was not getting any formal ownership interest in the franchise in exchange for his $550,000, he immediately sued to get his money back, and sought the appointment of a receiver to operate the service station. In order to avoid appointment of a receiver, Tran acknowledged he had received $365,000 toward purchase of the franchise, and agreed to give Farnaam a promissory note in that amount. In order to secure the debt, Tran gave Farnaam a security interest in the service

[1] ARCO has made a very belated request that we take judicial notice of the entire five volume reporter's transcript from the trial that took place in this matter. We decline to do so.

station, and Farnaam later perfected the interest by recording it with the Secretary of State's office.

Unfortunately for Farnaam, Tran's "PMPA Franchise Agreement" expressly gave ARCO the right to terminate if Tran failed to obtain the release of any lien against the business within 72 hours. (PMPA Franchise Agreement paragraph 22a(5).) Additionally the "SmogPros Center Agreement" which was apparently collateral to the franchise agreement, prohibited Tran from granting any security interest in the service station or its assets, without the prior consent of ARCO.[2] Doing so was grounds for termination of both agreements.[3] When ARCO learned of the existence of the lien, it exercised its right to terminate the agreements.

In the wake of the franchise termination, Farnaam amended his complaint, adding several new causes of action against ARCO. Among them were causes of action for conversion, impairment of security, wrongful termination of franchise and foreclosure of collateral. Each of these causes of action (except the conversion) was based upon the assertion that ARCO could not exercise its contractual right to terminate Tran's franchise without compensating Farnaam for his lien.

The court sustained ARCO's demurrer to each of these causes of action, as well as others, without leave to amend. Farnaam dismissed other causes of action against ARCO at the beginning of trial. Consequently, the operative complaint at trial alleged

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2 Section 17.07 of the "SmogPros Center Agreement" provided "Without the prior consent of ARCO, Operator may not pledge, mortgage or create a security interest in the business of the Center or assets used in connection with the Center which could result in the dispossession, through foreclosure or otherwise, of Operator or the attempted substitution of any other person as Operator of the franchise business. Operator shall notify ARCO of all other pledges, mortgages or security interests made in inventory or other assets of Operator which are used in connection with the Center."

3 Section 17.06 of the "SmogPros Center Agreement" provided "Any assignment or attempt by Operator to assign any of its rights or interests under this Agreement or the PMPA Agreement/Lease without having received the prior written consent of ARCO shall constitute a material breach of this Agreement and the PMPA Agreement/Lease and ARCO shall have the right to terminate this Agreement and the PMPA Agreement/Lease upon written notice to Operator."

causes of action against ARCO for negligence, intentional interference with contractual relations, constructive trust and accounting.[4]

At the conclusion of trial, the jury rendered special verdicts in favor of ARCO on both the causes of action for negligence and intentional interference with contractual relations. However, the court announced no decision on the equitable claims that day, nor were any further proceedings scheduled to address those claims. Approximately three weeks later, the court signed a judgment in favor of ARCO on the two causes of action decided by the jury, but without mention of the remaining equitable causes of action.

Farnaam filed a motion for new trial, arguing among other things that the court had failed to rule on his equitable claims. ARCO "urged" the court to rule on the equitable claims, and proceeded to argue against them on the merits.

The new trial motion was denied, without mention of the equitable claims. Farnaam filed an appeal with this court, raising various issues including the court's failure to rule on his equitable claims. We dismissed that appeal because the lack of a final adjudication of the equitable claims meant there was no final judgment. We remanded the case with instructions that the trial court rule on those claims. (Jun. 3, 1999, G021882 [unpublished opinion].) The court then formally ruled against Farnaam on the equitable claims, and this appeal followed.

I

On review of an order sustaining a demurrer without leave to amend, we must assume the truth of all facts properly pled, and determine whether a proper cause of action has been stated. If the cause of action is defective, we must decide whether there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Where the facts are undisputed, and the propriety of the

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4 Prior to trial, the court also entered the default of two other defendants, and severed Farnaam's case against yet another. There were also various cross-complaints filed, some of which were dismissed prior to trial and some of which were apparently severed and remained active after trial on the complaint.

order sustaining the demurrer turns on an issue of federal preemption, we review the decision de novo. (*American Internat. Group, Inc. v. Superior Court* (1991) 234 Cal.App.3d 749, 755.)

Initially we must note that Farnaam's brief is somewhat imprecise in identifying which causes of action he is attempting to revive by this appeal. At various points he states he is challenging the order sustaining the demurrer on the causes of action for "conversion, impairment of security and foreclosure of collateral." However, he otherwise makes clear that his sole concern at this point is the loss of his alleged security interest in the service station, and laments that his strongest causes of action against ARCO were "born out of his status as a secured party, including <u>impairment of security</u>, <u>wrongful termination of franchise</u> and <u>foreclosure of collateral</u>."

Moreover, Farnaam's conversion cause of action is 14 causes of action removed from the claims for impairment of security, wrongful termination of franchise and foreclosure of collateral, is based upon entirely separate facts, and makes no reference whatsoever to the alleged security interest. In fact, ARCO did not even assert the PMPA preemption as a basis for its demurrer to the conversion cause of action.

Instead, ARCO asserted the conversion claim failed for the more pedestrian reason that *it contained no allegations of wrongdoing against ARCO*. And indeed it does not. It asserts specifically that others, including Tabibi (but not including either ARCO or its franchisee, Tran), had wrongfully taken possession of monies and property belonging to Farnaam since 1992. According to Farnaam's other allegations, the security interest at issue herein was not even created until 1993.

In response to ARCO's attack on the sufficiency of the allegations against it, Farnaam attempted to rely on his generic allegation that each of the other defendants was acting as ARCO's agent in doing the things described in the complaint. However, that attempt was bootless. Although the court must accept as true all properly pled facts for purposes of evaluating a demurrer, the same is not true for conclusory factual statements. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

Farnaam offered no allegations of *specific* facts which, if true, would have established that Tabibi or the others converted his money and property on behalf of ARCO. Furthermore, Farnaam contended that the mere existence of the franchisee-franchisor relationship was sufficient to hold ARCO responsible for the acts alleged to have been committed by other defendants. But even if true, that contention would apply only to the alleged acts of *Tran, the franchisee*, not to other defendants such as Tabibi.

Because the conversion cause of action failed to state a claim against ARCO, a demurrer was properly sustained. And because Farnaam never sought leave to amend nor suggested any additional allegations against ARCO which would have rescued this cause of action, we cannot conclude the court erred in failing to offer him leave to amend.

II

Even if Farnaam had attempted to amend his conversion claim – or sought leave to plead a whole new one, based upon the assertion that ARCO's termination of the franchise agreement amounted to a conversion of his security interest – that attempt would have failed along with his causes of action for impairment of security, wrongful termination of security interest and foreclosure of collateral.

Each of these claims seeks either to impose liability upon ARCO based upon its termination of Tran's franchise agreement (conversion, impairment of security, wrongful termination of franchise), or to prevent that termination entirely (foreclosure of security.) As such, they each fall within the ambit of the PMPA.

"The Petroleum Marketing Practices Act (PMPA), 15 U.S.C. § 2802 *et seq.*, was intended to provide a single, uniform set of rules governing termination and non-renewal of petroleum franchises to reduce friction between franchisors and franchisees in marketing of motor fuels. State law relating to franchise termination is specifically preempted. 'In enacting the PMPA, Congress attempted to provide national uniformity of petroleum franchise termination law. The purpose of uniformity would be frustrated if the PMPA was not given its preemptory intent. Accordingly, we find the

PMPA preempts all inconsistent state law.'" (*Humboldt Oil Co., Inc. v. Exxon Co. U.S.A.* (9th Cir. 1987) 823 F.2d 373, 374-375, quoting *Atlantic Richfield Co. v. Herbert* (9th Cir. 1986) 806 F.2d 889, 892, other internal citations omitted; see also *Forty-Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1275["The PMPA applies when a franchise is terminated or not renewed."].)

The purpose of the PMPA is to "strike[] a balance between the interests of franchisees in being free from arbitrary and discriminatory terminations, and the franchisors' need to terminate franchises under appropriate circumstances and respond to changing market conditions." (*California Service Station etc. Assn. v. Union Oil Co*. (1991) 232 Cal.App.3d 44, 50.)

Because ARCO's right to terminate Tran's franchise is exclusively governed by the PMPA, any claim by Farnaam seeking to impose liability or otherwise interfere with ARCO's right to do so must be made pursuant to the PMPA. *Humboldt Oil, supra,* is instructive. In that case, the petroleum franchisee, Mastelotto, had been convicted of fraud in the sale of mislabeled motor oil. Based upon that conviction, Exxon terminated his franchise. Mastelotto sued, alleging under California law that Exxon had breached an oral agreement allowing him to transfer the franchise to a third party who had agreed to let him retain rights as an Exxon dealer. Although Mastelotto prevailed in the trial court, the appellate court reversed. "To the extent that the applications of state law frustrate federal objectives, they are preempted. We are directed to harmonize competing interests on a case-by-case basis. [¶] In this case, allowing Mastelotto to assign his franchise rights . . . would effectively deny Exxon its PMPA right to disassociate itself from Mastelotto. California law authorizing treble damages for refusal to accept assignment of a petroleum franchise . . . is an obstacle to accomplishment of Congress' undisputed interest in a national, uniform policy for petroleum franchise termination." (*Humboldt Oil Co., Inc. v. Exxon Co., supra,* 823 F.2d at 375, citations omitted.)

In this case, like *Humboldt Oil*, allowing Farnaam to assert state law claims against ARCO arising out of the termination of Tran's franchise would frustrate the PMPA's objective of uniformity, since the PMPA specifically authorizes termination of a franchise based upon breach of the franchise agreement. (15 U.S.C. § 2802, subdivision (b)(2) (A).)

Of course, Farnaam's cause of action for impairment of security is pled in terms of violating the PMPA, rather than any state law. Farnaam alleges that "ARCO, in derogation of FARNAAM's property interest in the . . . franchise [and] in violation of the Petroleum Marketing Practice[s] Act as alleged above, wrongfully terminated the . . . franchise and took physical control of the service station . . . ." Moreover, as Farnaam points out, state courts do have concurrent jurisdiction to hear claims based upon the PMPA (*Union Oil Co. v. O'Riley* (1990) 226 Cal.App.3d 199, 204.) Thus, if Farnaam could properly state a claim for wrongful termination of the franchise under the PMPA, as he attempted to do,[5] he should have been allowed to do so in this proceeding.

But he cannot state such a claim. The PMPA expressly provides that if the franchisor fails to comply with any of its provisions, "*the franchisee* may maintain a civil action against such franchisor." (15 U.S.C. § 2805(a), emphasis added.) Nothing in the PMPA authorizes a third party such as Farnaam to maintain such a claim.

Of course, Tran himself had standing to assert a claim for wrongful termination of the franchise. Assuming for purposes of argument that Tran would have prevailed on that claim, and established that ARCO had no valid basis for terminating the franchise, his failure to do so (and hence to protect the value of the franchise) might itself have constituted an impairment of the security interest. ARCO, by contrast, having never consented to the security interest, was under no obligation to compromise its termination rights as a result of it.

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[5] Although the cause of action is titled "impairment of security" its actual theory of liability, as expressly stated therein, is wrongful termination. The impairment of security is merely the damages alleged to flow from that termination.

Finally, we must note there is a certain "Catch-22" effect at work in this case, a circumstance Farnaam apparently does not want to recognize. The security interest at the heart of this dispute is essentially self-defeating. ARCO specified in Tran's franchise agreement that the creation of any security interest in the business "which could result in the dispossession, through foreclosure or otherwise, of [Tran] . . ." was grounds for termination of the franchise. That termination, of course, would render the franchise, and hence the security interest, worthless. In short, to the extent the termination provision is enforceable, it makes the franchise automatically worthless as security.

And we think it is enforceable. Clearly, the purpose of this oxymoronic little scenario is to prohibit exactly what happened in this case; i.e., a third party (Farnaam) asserting a legal right to take possession of an ARCO franchise, without ever being approved as a proper franchisee. Such an occurrence is one which ARCO has a strong interest in preventing, and thus we believe that violation of such a provision would be an enforceable basis for termination of the franchise under the PMPA.

In *Moody v. Amoco Oil Company* (7th Cir. 1984) 734 F. 2d 1200, the court held that petroleum franchisors have a valid and protectable interest in ensuring the financial health of their franchisees, and thus a franchisor can validly terminate the franchise upon a violation of franchise provisions designed to ensure the financial stability of the franchisee. Specifically, the *Moody* court held that the franchisee's act of writing bad checks was a valid basis for terminating the franchise under the PMPA, even though not specifically listed as grounds for termination under 15 U.S.C. section 2802, subdivision (c). The court noted that the grounds for termination listed in the statute were not exclusive, and Congress intended to allow termination based upon other reasonable grounds.

In this case, the prohibition against creating a security interest in the franchise itself prevents the franchisee from getting so far into debt that it loses its ability to exercise control over the franchise and its assets. The circumstances of this case demonstrate the wisdom and necessity of such a provision, and we conclude that its violation would be a reasonable basis for terminating the franchise under the PMPA. Consequently, pursuant to the provisions of the franchise agreement, Tran's attempt to hypothecate the franchise triggered ARCO's right to terminate,[6] and simply revealed the truth; i.e., that by virtue of its creation, the security had no enforceable value.

The judgment is affirmed. ARCO is to recover its costs on appeal.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.

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6 Technically, the creation of the security interest did not automatically trigger the right to terminate. There are notice and "cure" provisions which come into play when the franchisee violates the agreement. However, an opportunity to "cure" is irrelevant to Farnaam's claims here, which are based upon the *existence* of the prohibited security interest. Tran could only have "cured" his violation of the franchise agreement by extinguishing that security interest and thus the very basis of these claims.